

ORDINANCE NO. 96-3
AN ORDINANCE RELATING TO
THE CONTROL AND PREVENTION OF GRAFFITI IN THE
UNINCORPORATED TERRITORY OF EL PASO COUNTY

WHEREAS, pursuant to Colorado Revised Statutes § 30-15-401, the Board of County Commissioners of El Paso County has the power to adopt ordinances for control or licensing of those matters of purely local concern; and

WHEREAS, pursuant to Colorado Revised Statutes § 30-15-401, matters of purely local concern include the prevention and suppression of riots, routs, affrays, disturbances, and disorderly assemblies in any public or private place, and C.R.S. § 30-15-401(1)(d.5) further provides for the restraint and punishment of defacement of public and private property by juveniles; and

WHEREAS, pursuant to C.R.S. §§ 29-20-102 and 29-20-104, as amended, the Board of County Commissioners of the County of El Paso, State of Colorado, has the power to plan for and regulate the use of land on the basis of impact on the community and the surrounding areas, and preserve areas of historical and archaeological importance; and,

WHEREAS, it has come to the attention of the Board of County Commissioners of El Paso County, that residents have experienced problems with graffiti by individuals in relation to gang activity and the criminal activities, disturbances and vandalism associated with said gangs; and

WHEREAS, the Board of County Commissioners of the County of El Paso, State of Colorado, has been presented with information from law enforcement officials that graffiti within the County may be a useful method of communication within and between criminal organizations to the detriment of the public safety; and

WHEREAS, the Board of County Commissioners of the County of El Paso, State of Colorado, finds and determines that graffiti on public and private property is a blighting factor which not only depreciates the value of the property upon which it is located, but also depreciates the value of the adjacent and surrounding properties, and in so doing negatively impacts the entire community; and,

WHEREAS, the Board of County Commissioners of the County of El Paso, State of Colorado, further finds and determines that abatement of such conditions will enhance the appearance of and benefit the use and enjoyment of properties in the County, and improve the values and appearance of neighboring properties; and,

WHEREAS, the Board of County Commissioners finds that El Paso County Government, the municipalities and the citizens of El Paso County must cooperate to effectively combat the threat posed by graffiti; and,

WHEREAS, the Board of County Commissioners finds and determines that graffiti and other inscribed materials invite further placement of graffiti and other inscribed material, and that surrounding property then becomes subject to graffiti and other inscribed material with the result that entire neighborhoods are effected and the entirety of the community becomes a less desirable place in which to reside;

WHEREAS, the Board of County Commissioners of the County of El Paso, State of Colorado, finds and determines that graffiti must be rapidly abated so as to avoid detrimental impacts on the public peace, health, safety and welfare of the citizens of El Paso County and to prevent the further spread of graffiti although the costs of such abatement may be prohibitive for small property owners.

NOW THEREFORE, BE IT ORDAINED, by the Board of County Commissioners of El Paso County, State of Colorado, as follows:

Section 1. Legislative Declaration:

1.1 This Ordinance shall be known and may be cited as the "El Paso County Graffiti Ordinance."

1.2 The County Commissioners find and declare that it is the right of every person, regardless of race, color, creed, religion, national origin, sex, age, or handicap, to be secure and protected from intimidation and physical harm caused by the activities associated with the application of graffiti and the property destruction done by said graffiti. It is not the intent of this Ordinance to interfere with the exercise of the constitutionally protected rights of freedom of expression and association. The County Commissioners hereby recognize the constitutional right of every citizen to harbor and express beliefs of any subject whatsoever, to lawfully associate with others who share similar beliefs, to petition lawfully constituted authority for redress of perceived grievances, and to participate in the electoral process.

1.3 The County Commissioners further find, however, that the citizens of El Paso County are concerned as a result of violent street gangs whose members threaten, terrorize, and commit a multitude of crimes against the peaceful citizens of their neighborhoods. These activities, both individually and collectively, present a clear and present danger to public order and safety and are not constitutionally protected. The County Commissioners find that the number of gang related crimes is increasing.

1.4 In conjunction with the aforementioned crimes, there has been a proliferation of graffiti done both by gang members and individuals. It is the intent of the County Commissioners in enacting this Ordinance to prevent the destruction of public or private property by the application of graffiti by individuals, gang members, or gangs, and the cost associated with the clean-up

thereof.

1.5 It is also the purpose and intent of this Ordinance to provide a procedure for removal of graffiti from public and privately owned property in order to reduce deterioration of communities within the unincorporated areas of El Paso County.

1.6 The recitals set forth above are incorporated herein by reference.

1.7 In consideration of the purposes and recitals stated above, it is the intent of this Ordinance to punish those persons who introduce graffiti onto public and privately owned property. It is further intended that this Ordinance provide for the abatement of graffiti and the imposition of fines and costs against those persons who apply graffiti on public or private property.

Section 2: Definitions.

As used in this Ordinance the following words are defined as follows:

2.1 "*Abatement Procedure*" - means a formal or informal procedure which issues notice to the landowner to abate graffiti, and removes or covers such graffiti in the absence of correction by the landowner.

2.2 "*Board*" - means the Board of County Commissioners of El Paso County, Colorado.

2.3 "*Gang*" - means any ongoing organization, association, or group of three (3) or more persons, whether formal or informal, which is involved in the commission of one (1) or more of the criminal acts enumerated in this Ordinance or Title 18 of the Colorado Revised Statutes, which has a common name or common identifying sign or symbol, whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

2.4 "*Gang Graffiti*" - defacing of public or private property by one or more members of gangs by means of painting, drawing, writing, etching, carving with knives, carving with scribes, or any similar method, without written consent of the property owner.

2.5 "*Graffiti*" - means the defacing or tagging of public or private property by one or more persons by means of painting, drawing, dye, chalk, ink, writing, etching, carving with knives, carving with scribes, or any similar method or substance without the written consent of the property owner.

2.6 "*Individual*" - means one or more persons acting alone or in concert to apply graffiti upon public or private property.

2.7 "*Enforcement Officer*" means, a peace officer as defined in C.R.S. § 18-1-901(3)(1), or, pursuant to C.R.S. § 30-15-402.5, any official charged with enforcement of zoning regulations

within unincorporated El Paso County, including Code Enforcement Officers employed by the El Paso County Planning Department. Personnel designated by this Ordinance, however titled or administratively assigned, may issue citations or summonses and complaints enforcing this Ordinance without regard to the certification requirements of part 3 of Article 31 of Title 24, C.R.S. Nothing in this definition or this Ordinance is intended to vest authority in any person so engaged to enforce this Ordinance through execution of an administrative entry and seizure warrant issued pursuant to C.R.S. § 30-15-401 or through exercise of any power other than the power to issue a citation or summons and complaint.

2.8 "*Property Owner*" - a person owning, leasing, occupying or having control or possession of any real or personal property within Unincorporated El Paso County.

2.9 "*Sheriff*" - means the Sheriff of El Paso County, Colorado or his duly appointed Deputies.

2.10 "*Structure*" means any improvement to real property and shall include but not be limited to walls, sidewalks, windows, fixtures, and masonry.

2.11 "*Tag*" or "*Tagging*" - graffiti placed upon public or private property by one or more individuals.

2.12 "*Unincorporated El Paso County*" - that portion of El Paso County, Colorado not within the corporate boundaries of a municipality.

Section 3: Applicability

This Ordinance shall apply to all portions of unincorporated El Paso County.

Section 4: Regulations and Violations

4.1 **Graffiti Prohibited.** It shall be a violation of this Ordinance for any individual or group of person(s) to paint, spray paint, draw, write, etch, "*Tag*", carve, or by any similar method whatsoever, deface any public or private property, building, or structure except with the written consent of the owner of said property.

4.1.1 Nothing herein shall preclude administration of the Abatement Procedure outlined in Section 8 below.

4.2 Violation - Penalty:

4.2.1 Any person who places graffiti on public or private property without the written consent of the owner of said property commits a class 2 petty offense and upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars nor more than six hundred dollars for

each separate violation, including a statutory surcharge, as provided by C.R.S. § 30-15-402.

4.2.2 Any person who removes any notice or order posted as required in this Ordinance commits a class 2 petty offense and upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars nor more than six hundred dollars for each separate violation, including a statutory surcharge, as provided by C.R.S. § 30-15-402.

4.2.3 Any person who obstructs, impedes or interferes with any representative of El Paso County or its private contractors, or with any property for which a Notice of Intent to Remove Graffiti and/or an Order to Abate Graffiti has been issued, commits a class 2 petty offense and upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars nor more than six hundred dollars for each separate violation, including a statutory surcharge, as provided by C.R.S. § 30-15-402.

4.3 **Available Remedies and Penalty Assessment Procedure and Penalty Schedule.**

4.3.1 Any Enforcement Officer shall have, but not by way of limitation, the following remedies with respect to abatement of graffiti violations concerning public or private property:

- A. After considering the facts and circumstances, the Enforcement Officer may authorize no action be taken on a complaint of an alleged graffiti violation; or
- B. Informal Contact: The Enforcement Officer is authorized to effectuate the abatement of graffiti through informal meetings or conversations, and provide information and assistance concerning voluntary removal of graffiti; or
- C. Agreement to Abate: The Code Enforcement Officer may enter into a formal written agreement with a violator whereby the violator agrees to abate the violation within a certain time frame based upon certain conditions noted in the agreement. Should the violator not abide by the agreement, the Enforcement Officer may proceed with abatement as provided in Section 8 of this Ordinance; or
- D. Notice and Order: The Enforcement Officer may issue a Notice and Order to the violator pursuant to Sections 6 and 7 of this Ordinance.

4.3.2 The penalty assessment procedure provided in C.R.S. §16-2-201, may be followed by any arresting officer for any violation of this Ordinance. For a first offense by any individual, the offense shall be punishable by a fine of twenty-five dollars for each separate violation, including a statutory surcharge. Pursuant to C.R.S. §30-15-401(1), the Board adopts a graduated fine schedule as herein set forth for subsequent violations by the same individual.

4.3.3 For a second repeat offense by the same individual, the offense shall be punished by a fine of not less than one-hundred dollars nor more than six hundred dollars for each separate violation, including a statutory surcharge, as provided by C.R.S. § 30-15-402.

4.3.4 For a third repeat offense by the same individual, the offense shall be punished by a fine of not less than two-hundred dollars nor more than six hundred dollars for each separate violation, including a statutory surcharge, as provided by C.R.S. § 30-15-402.

4.3.5 For each repeat offense by the same individual after a third repeat offense, the offense shall be punished by a fine of not less than six hundred dollars for each separate violation, including a statutory surcharge, as provided by C.R.S. § 30-15-402.

4.3.6 As noted, in addition to the penalties prescribed, persons convicted of a violation of this Ordinance are subject to a surcharge of ten dollars pursuant to C.R.S. § 30-15-402(2), and these surcharges shall be paid to the clerk of the court by the defendant and credited to the Victims and Witnesses Assistance and Law Enforcement Fund for the Fourth Judicial District.

Section 5: Enforcement.

The criminal provisions of this Ordinance shall be enforced by the El Paso County Sheriff, and prosecuted in the El Paso County Court by the District Attorney's Office for the Fourth Judicial District. Any Judge of the El Paso County Court adjudicating violations of this Ordinance may require any person convicted of a violation of this Ordinance to personally repair any damaged property. Code Enforcement Officers employed by the El Paso County Planning Department are authorized to issue Notices of Intent to Remove Graffiti as more fully set forth in Section 6.2.

Section 6: Notice:

6.1 Whenever an Enforcement Officer determines that graffiti exists on any property in the Unincorporated Areas of El Paso County which is visible to the public, the Enforcement Officer may take such action as authorized under Section 4.3.1, or cause a written notice to be issued to abate such graffiti. The party so noticed shall have ten (10) days after the date of notice sent to them to remove such graffiti prior to the beginning of further proceedings under this Ordinance. Notice under this Section shall be a prerequisite to use of the "Penalty" procedure described in Section 4 and/or the "Abatement Procedure" described in Section 8 below.

6.2 Those employees of the Planning Department designated by the Director of Planning are authorized to act as Enforcement Officers pursuant to Section 4 and may issue Notices of Intent to Remove Graffiti pursuant to Sections 6 and 8 of this Ordinance. Nothing in this section is intended to operate to make these employees peace officers. Further, nothing in this section is intended or shall operate to change or shall have the effect of changing the status of the employees authorized to act pursuant to this section from public or miscellaneous employees to individual peace officers or classes of peace officers.

Section 7: Service of Notice.

Persons who are believed to exercise control over the property where graffiti exists may be served with notice to abate such graffiti. Any written notice to abate graffiti pursuant to Section 6 shall also be served upon the owner of the premises where graffiti exists and upon any persons with an interest appearing on the property tax assessment rolls of El Paso County. Such notice shall be sent to the address which appears on the property tax assessment rolls. The above notices shall be served in one of the following manners:

7.1 By registered or certified mail sent to the address of any person with an interest appearing on the property tax rolls. If no such address is found, the notice will be sent to the address of the premises where the graffiti exists.

7.2 If a mailed notice is returned undelivered within seven (7) days after the date of mailing, the notice may be served by posting the same in a conspicuous place on the premises where the graffiti exists.

7.3 The notice shall be substantially in the following form:

NOTICE OF INTENT TO REMOVE GRAFFITI

Date: _____

Time: _____

NOTICE IS HEREBY GIVEN, pursuant to El Paso County Ordinance 96-3, entitled "El Paso County Graffiti Ordinance," that the law requires that graffiti, which is visible to the public, located on the property commonly known as _____, El Paso County, Colorado, be removed or painted over within ten (10) days after the date of this notice. If such graffiti is not abated, County employees or private contractors employed by the County may be authorized to enter upon your property and abate such graffiti by removal or painting over the graffiti.

All persons having any interest in said matters are hereby notified to contact the El Paso County Planning Department, Fifth Floor, 27 E. Vermijo Ave., Colorado Springs, Colorado 80903 within ten (10) days of this notice for information concerning this Notice or possible assistance in abating the graffiti.

Section 8: Abatement Procedure:

8.1 Where, after giving proper notice as provided in Sections 6 and 7 above, an Enforcement Officer has cause to believe that graffiti which is the subject of such notice has not been abated within the time allowed therefor, he may institute proceedings to abate the graffiti in question.

8.2 Prior to abatement of the graffiti there shall be held a hearing before the Board of County Commissioners. The owner and any persons having an interest of record in the property from which graffiti is to be abated shall be given written notice of the hearing at least seven (7) days in advance thereof, served in the manner described in Section 7, above.

8.3 At the hearing before the Board of County Commissioners, an officer or employee of the County shall present evidence of the graffiti to be abated. The owner or such persons with an interest of record who are in attendance at the hearing may give evidence and show cause why the graffiti should not be abated forthwith. The County shall have the burden of proof by a preponderance of evidence.

8.4 If the Board of County Commissioners finds that graffiti exists on the property as alleged and that the persons with control over such property have failed to abate such graffiti within ten (10) days after receiving notice thereof, then the Board of County Commissioners shall issue an order stating that the El Paso County Department of Transportation or other agents (such as private contractors) may enter upon the property for the purpose of abating such graffiti.

Section 9: Alternative Remedies.

It is the intent of the Board of County Commissioners that the provisions and procedures set forth in this Ordinance shall not expressly or by implication repeal or supersede any other provisions or procedures under County Ordinance, State law, or otherwise. This Ordinance shall supplement existing procedures and will provide an alternative, non-exclusive procedure for the abatement of graffiti nuisances. Nothing in this Ordinance shall preclude abatement of graffiti by El Paso County through civil process by means of restraining order, preliminary or permanent injunction or in any other manner provided by law for the abatement of such nuisance. Nothing in this Ordinance shall preclude or prohibit El Paso County from resorting to any appropriate legal remedy, whether civil or criminal, in the abatement of any graffiti, and when utilized, the hearing and appeal procedures provided in this Ordinance to determine the existence of a nuisance shall not be applicable.

Section 10: Public Property.

Where a structure is owned by a public entity other than the County of El Paso, the Assessment of Costs provisions contained in this Ordinance shall not apply. All other provisions of this Ordinance shall apply.

Section 11: Costs.

After abatement of any graffiti as provided in Section 8 above, the Director of the Department of Transportation or his designee shall provide the Board of County Commissioners with an account of costs associated therewith.

Section 12: Disposition of Funds and Fines.

12.1 All fines for violations of this Ordinance shall be paid into the General Fund of El Paso County upon conviction.

12.2 There is hereby created with this Ordinance the El Paso County Graffiti Removal Account for the purpose of providing an independent source of revenue for the elimination and clean-up of graffiti.

12.3 Upon further resolution of the Board of County Commissioners, funds from fines for violations of this Ordinance may be appropriated from General Fund revenues to the El Paso County Graffiti Removal Account.

12.4 Upon further resolution of the Board of County Commissioners, the El Paso County Graffiti Removal Account may accept grants or donations of funds or equipment.

12.5 Funds within the El Paso County Graffiti Removal Account may be used to pay for the cost of graffiti removal or clean-up of graffiti on public or private property, buildings or structures at the discretion of the Director of Planning.

Section 13: Severability.

If any one or more of the provisions of this Ordinance are determined by a court of law to be invalid, such determination shall not affect the validity of the remaining provisions of this Ordinance.

Section 14: One-year limitation of suits.

Pursuant to C.R.S. § 30-15-409, all suits for the recovery of any fine and prosecutions for the commission of any offense made punishable under this Ordinance shall be barred one year after the commission of the offense for which the fine is sought to be recovered.

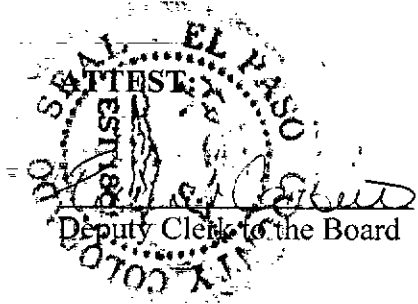
Section 15: Effective Date.

15.1 This Ordinance shall take effect upon adoption by the Board of County Commissioners of El Paso County, State of Colorado, for the immediate preservation of the health and safety of the residents of the unincorporated portions of the County, and the Board of County Commissioners further authorizes publication of this Ordinance in book or pamphlet form.

15.2 Any future amendment to this Ordinance may be accomplished by resolution of the Board of County Commissioners and shall be effective thirty (30) days following publication of such amendment.

FIRST READING:

INTRODUCED, READ AND ADOPTED ON FIRST READING on July 29, 1996
and ordered published in full in the El Paso County News



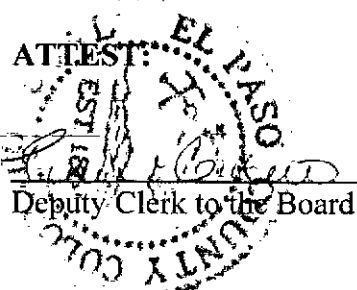
THE BOARD OF COMMISSIONERS
OF THE COUNTY OF EL PASO, COLORADO

BY: 

Loren Whittemore, Chairman of the Board

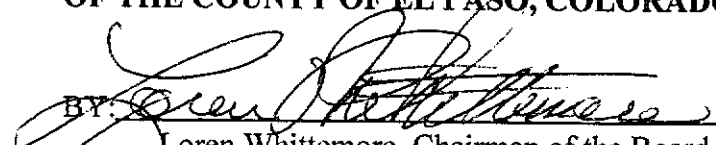
SECOND READING:ADOPTED ON SECOND AND FINAL READING on August 12, 1996.

ATTEST:

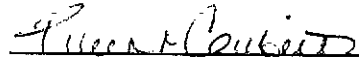

 Deputy Clerk to the Board

**THE BOARD OF COMMISSIONERS
OF THE COUNTY OF EL PASO, COLORADO**

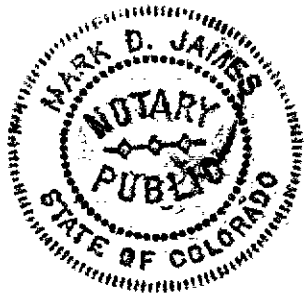
BY:


 Loren Whittemore, Chairman of the Board
CERTIFICATE OF PUBLICATION AND ADOPTION

I hereby certify that the foregoing Ordinance No. 96-3 was introduced, read and adopted on first reading at the regular meeting of the Board of County-Commissioners of the County of El Paso on July 29, 1996, and the same was published in full in the El Paso County News, a newspaper of general circulation published in El Paso County, on July 31, 1996, and thereafter was adopted on second and final reading at a regular meeting of the Board of County Commissioners of the County of El Paso on August 12, 1996. Said Ordinance was republished by Title and in full with changes made by the Board of County Commissioners on August 21, 1996.


 Deputy Clerk to the Board
 Clerk and Recorder's Office
 El Paso County

 State of Colorado)
 County of El Paso) ss.
Subscribed and sworn to before me this 24th day of September, 1996

 Notary Public
My Commission Expires: 10/21/98

CERTIFICATION AS TO AUTHENTICITY

I, Ardis W. Schmitt, El Paso County Clerk and Recorder, do hereby certify that the foregoing Ordinance No. 96-3, entitled "An Ordinance Pertaining to the Control and Prevention of Graffiti in the Unincorporated Territory of El Paso County" is a true, correct and complete copy from the records of my office, that said Ordinance was duly adopted by the Board of County Commissioners of El Paso County and is in full force and effect.



Ardis W. Schmitt

By: [Signature]

Deputy Clerk to the Board
Clerk and Recorder's Office
El Paso County